

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.6176 OF 1985

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

-
1. Whether reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy of the judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge?

SRICHAND FERUMAL BALCHANDANI & ORS.
VERSUS
THE STATE OF GUJARAT & ANR

Appearance:

Mr.P.V.Hathi for the Petitioners
Mr.H.L. Jani for the Respondents

Coram: S.K. Keshote,J
Date of decision:9.5.97

C.A.V.JUDGMENT

This is an unfortunate litigation by petitioners

before this Court. This writ petition clearly exhibits how arbitrarily the officers of the State of Gujarat act while dealing with the matter of citizens. Not only this, it clearly exhibits the red-tapism which is there in the offices of the State.

2. The facts, in brief, of the case are that the petitioner No.1 who wanted to have agricultural land for personal cultivation moved an application for grant of permission to purchase the land admeasuring 4 acre 10 gunthas of village Kuvadva from its occupant Shri Kantilal. The application was duly processed through Mamlatdar and the Deputy Collector, under its order dated 30th June 1981, granted permission in favour of the petitioner. The occupant of the land Shri Kantilal refused to execute the document of sale because of increase in price. The time prescribed under the order dated 30th June 1981 for purchase of land was of one year within which the petitioner was required to purchase the land. As the time prescribed under the said order was due to expire, the petitioner No.1 entered into an agreement for purchase of another piece of agricultural land in adjoining village from petitioners No.2 and 3 and immediately moved an application on 29th March 1982 to the Deputy Collector concerned for necessary modification of the order earlier made by the said authority on 30th June 1981 in his favour. After filing the application dated 29th March 1982, the petitioner No.1 went on sending reminders to the Deputy Collector for making necessary modification in the order dated 30th June 1981. As the period of one year was due to expire on the last day of June 1982, and the application made by the petitioner for modification of the earlier order has been processed and the same was pending for the order, he paid consideration to petitioners No.2 and 3 and got the document executed on 2.8.92 and his name was duly mutated in the revenue records also. The Deputy Collector concerned has not passed any order on the application of the petitioner dated 29th March 1982, but has taken it to be a case of violation of provisions of Section 54 of the Saurashtra Ordinance No.41/49 and issued a show cause notice dated 9.10.83 under Rule 108(6) of the Land Revenue Rules to the petitioner to show cause why the entry made in the name of the petitioner No.1 should not be cancelled. The Deputy Collector, by its order dated 29th October 1983, held that the land sold by petitioners No.2 and 3 to petitioner No.1 was invalid. The petitioner filed revision against the said order before the State Government which came to be dismissed under the order dated 20th April 1985. Hence this Special Civil Application before this Court.

3. The writ petition has come up for hearing before this Court for admission on 8.11.85 on which date, Rule was issued and interim relief in terms of para 16(E) has been granted. So the operation of both the impugned orders has been stayed.

4. The learned counsel for the petitioners, by assailing the impugned orders, has advanced five-fold arguments. The first contention of the learned counsel for the petitioners is that there was substantial compliance of Section 54 and Rule 108 of the Saurashtra Ordinance and therefore there was no breach as alleged. Secondly, the learned counsel for the petitioners contended that the present inquiry was one under the Land Revenue Code as against the entry and was not one under the Saurashtra Ordinance and therefore the order is without jurisdiction on the principles laid down by this Hon'ble Court in the case of Evergreen Apartment Co-op. Housing Society v. Special Secretary, Revenue Department, Gujarat State, reported in 1991(1) GLR 113. The third contention of the learned counsel for the petitioners is that the order was beyond the show cause notice and therefore the impugned orders are passed in breach of the principles of natural justice. Fourthly, the learned counsel for the petitioners contended that the Deputy Collector had not acted bonafide as he, instead of disposing of the application pending before him for permission, started the proceedings after the entry made and certified. Lastly, the learned counsel for the petitioners contended that the order was passed by Deputy Collector after an unreasonable time.

5. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties. It is not necessary to advert to all the contentions raised by the learned counsel for the petitioners. The learned counsel for the respondents, Shri H.L. Jani, very fairly conceded that the application filed by the petitioner before the Deputy Collector on 9th March 1982 was not decided and is lying undecided till date. So, it is an admitted fact that the petitioner No.1's application for necessary correction or modification in the earlier order dated 30th June 1981 was not disposed before the petitioner was called upon to show cause why the sell made in his favour of the land in dispute by petitioners No.2 and 3 should not be held to be invalid. It is true that the petitioners, instead of taking the things granted, should have approached the higher authority against the inaction, omission or slackness on the part of the Deputy Collector, but the Court cannot be

oblivious of the fact that permission was granted to the petitioner for purchase of agricultural land of one Shri Kantilal and it is not unnatural or beyond human conduct that Shri Kantilal would have backed out from the said dealing. In such case, the petitioner No.1 has arranged another land for purchase within the period of currency of the order dated 30th June 1981 and within time, he applied to the Deputy Collector for making necessary modification in the order dated 30th June 1981, to that effect. It is also not in dispute that the Deputy Collector got this application of the petitioner No.1 dated 29th March 1982 duly processed through the Mamlatdar and it is also not the case of respondents that the Mamlatadar has found anything wrong in the dealing of petitioner No.1 and petitioners No.2 and 3 or anything objectionable on facts or law in transfer of the land from petitioner No.2 and 3 to petitioner No.1. The petitioners may be guilty of technically acting contrary to the provisions of Section 54 of the Ordinance aforesaid, but at the same time, the respondent-authorities are also equally responsible for this situation. The case in hand is example of how the authorities compel the persons to act contrary to the law, Rules and Regulations. When the petitioner No.1 moved the application well in time, it was obligatory on the part of the Deputy Collector concerned to take decision within time of the currency of the order dated 30th June 1981. The Deputy Collector could not have sat over the application of the petitioner No.1 and he should have considered the reality of things that the petitioners have already entered into an agreement and they would have also bonafidely believing that the application dated 29th march 1982 would have found favour of the authorities concerned. In case the petitioners can be labelled to have contravened the provisions of the aforesaid Ordinance or Land Revenue Rules, then at the same time, the authorities are equally at fault.

6. The net result of the aforesaid discussion is that the matter needs consideration afresh and accordingly it is remitted back to the Deputy Collector, Rajkot. The first authority, the Deputy Collector, Rajkot, has to consider the application of the petitioner No.1 dated 29th March 1982 and pass the order thereon in accordance with law. However while dealing with the said application, the Deputy Collector, Rajkot, will keep in mind the broad aspect that the permission for purchase of agricultural land has been granted in favour of petitioner No.1 under the order dated 30th June 1981 but that deal could not be materialised as the vendor has backed out from the said dealing. Secondly, the Deputy

Collector shall also take into consideration the fact that the petitioner filed an application for modification of the order dated 30th June 1981 after arranging to purchase another land of petitioners No.2 and 3., the sale deed has already been executed, the necessary correction of the entry in record of rights has been made and the petitioner No.1 is in possession of the land for all these years and he would have also made improvement thereon.

7. In the result, this Special Civil Application succeeds in part the orders dated 29th October 1983 of the Deputy Collector and that of the Secretary (Appeals), Revenue Department, State of Gujarat, dated 20th April 1985, are quashed and set aside. The matter is old one and as such, it is expected of the Deputy Collector to decide the same afresh within reasonable time. The Deputy Collector will first take up the matter of the application dated 29th March 1982 filed by petitioner No.1 and in case this application is allowed and the order dated 30th June 1981 is suitably modified, then there is no question of taking any proceedings pursuant to the show cause notice under Rule 108(6) of the Land Revenue Rules. Only in case that application is not accepted, there may be justification to proceed with the show cause notice by Deputy Collector, and in that case also, while passing the order, the Deputy Collector will keep in mind the observations made above. This Special Civil Application and the Rule accordingly stand disposed of. No order as to costs.

.....

(sunil)